



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: JUNE 03, 2022

IN THE MATTER OF:

Appeal Board No. 620435

PRESENT: GERALDINE A. REILLY, MEMBER

The Department of Labor issued the initial determination disqualifying the claimant from receiving benefits, effective February 27, 2021, on the basis that the claimant voluntarily separated from employment without good cause. The claimant requested a hearing.

The Administrative Law Judge held a telephone conference hearing at which all parties were accorded a full opportunity to be heard and at which testimony was taken. There was an appearance by the claimant. By decision filed December 16, 2021 (), the Administrative Law Judge overruled the initial determination.

The Commissioner of Labor appealed the Judge's decision to the Appeal Board. The Board considered the arguments contained in the written statement submitted on behalf of the Commissioner of Labor.

Based on the record and testimony in this case, the Board makes the following

FINDINGS OF FACT: The claimant began working as a fast-food restaurant manager in 2015. The claimant worked from 5:00 am to 2:00 pm, Tuesday to Saturday.

During the pandemic the restaurant was open to the public. The restaurant followed all of the Center for Disease Control's (CDC) guidelines. In February 2021 the claimant was notified that both the owner and her supervisor had tested positive for COVID-19 and that she was required to take a COVID-19 test. The claimant tested negative.

The claimant informed the employer that she was uncomfortable working on the job because of a fear of contracting the COVID-19 virus and that she was resigning. The claimant had a one-year-old child. The claimant was not vaccinated against the COVID-19.

OPINION: The credible evidence established that the claimant quit, due to a fear of catching COVID-19. While two members of management contracted the vaccine in February 2021, the evidence also establishes that the employer followed all of the CDC guidelines as required including taking the necessary precautions to prevent the spread of COVID-19 amongst staff.

We conclude that the claimant's general fear of COVID-19 is not good cause for her quit. While the claimant's fear of contracting the virus and passing it along to her child is understandable, we have held in similar cases that such fear, without more, such as the employer not following CDC guidelines, does not constitute good cause to leave continuing employment for Unemployment Insurance purposes (see Appeal Board Nos. 613258, 615642, 616546 and 617227).

DECISION: The decision of the Administrative Law Judge is reversed.

The initial determination disqualifying the claimant from receiving benefits, effective February 27, 2021, on the basis that the claimant voluntarily separated from employment without good cause is overruled.

The claimant is denied benefits with respect to the issues decided herein.

GERALDINE A. REILLY, MEMBER